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No. 97

In the Supreme Court of the United States

OCTOBER TERM, 1954

LLOYD WEBER, RUSSELL L. DAVIS, WALTER PATRICK, THOMAS BLAKE, ALBERT MELTON, WINFIELD SCOTT MUSLER, ROBERT HAMMER, WILBERT A. REEB, BERNARD SIEMER, AND THOMAS MULVANEY, INDIVIDUALLY AND AS REPRESENTATIVES OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT NO. 9, PETITIONERS

v.

ANHEUSER-BUSCH, INC., A CORPORATION

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD AS AMICUS CURIAE

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OPINIONS BELOW

The opinion of the Supreme Court of Missouri (R. 104-126) is reported at 265 S. W. 2d 325. The decision and order of the National Labor

Relations Board relating to the instant controversy is reported at 101 NLRB 346.

JURISDICTION

The petition for a writ of certiorari was granted on October 14, 1954 (R. 128). The jurisdiction of this Court is invoked under 28 U. S. C. 1257(3).

QUESTION PRESENTED

Whether the National Labor Relations Act precludes a state court, acting under authority of a state restraint of trade law, from enjoining peaceful picketing, the sole object of which is the inclusion in a collective bargaining agreement of a clause limiting the employer's selection of outside contractors to those having collective bargaining agreements with the picketing union.

STATUTES INVOLVED

The pertinent provisions of the Labor Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C., 141, *et seq.*), and of the Revised Statutes of Missouri are set forth in the Appendix, *infra*, pp. 41-50.

STATEMENT

Respondent Anheuser-Busch, Inc., a Missouri corporation engaged in the manufacture and sale of beer and other products, is engaged in interstate commerce (R. 101; 21-22).[1] In its St. Louis plant

[1] The record before the Board on one facet of the instant controversy (*infra*, pp. 4-5) established that respondent's inflow and outflow of goods across state lines totalled respectively more than $1,000,000 in volume (101 NLRB 346, 347). Hence, the Board would assert jurisdiction over respondent

respondent employs approximately 6000 persons, about 220 of whom are machinists (R. 104; 22, 38). In 1948, International Association of Machinists, District No. 9, petitioner herein, which for years had represented these machinists for purposes of collective bargaining, was certified by the Board as their exclusive bargaining representative (R. 24-25). Following this certification, petitioner and respondent entered into a series of collective bargaining contracts, the last of which terminated on December 31, 1951 (R. 107; 4, 13, 25).

Late in 1951 and early in 1952 the parties engaged in negotiations for a new contract (R. 5, 13). The 1951 contract had contained a clause (Article VII, Section 1) limiting machinist work in the plant to members of the unit represented by petitioner, and a further clause (Article VII, Section 2), the effect of which was to require respondent, which regularly contracted out work of installing, erecting, and moving new machinery, to confine its selection of contractors to those having collective bargaining agreements limiting such work to employees represented by International Association of Machinists (R. 4-5, 13). The negotiations for a new contract foundered on petitioners' insistence and respondent's refusal to continue to incorporate the latter provision in a new agreement (R. 107-

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even under the self-imposed limitations now governing its exercise of jurisdiction in cases coming before it. See *Jonesboro Grain Drying Cooperative*, 110 NLRB No. 67, 35 LRRM 1038, 1039, decided October 26, 1954.

108; 33-34).[2] An impasse having been reached, petitioners went on strike on April 7, 1952, and peacefully picketed respondent's premises (R. 109-110; 16, 48-55).

On the following day, respondent filed a charge with the National Labor Relations Board alleging that petitioners had engaged in strike activity, in violation of Section 8(b)(4)(D) of the National Labor Relations Act, as amended, for the purpose of forcing and requiring respondent and those contracting with it to assign certain work to employees who were members of petitioner union rather than to employees who were members of other labor organizations (R. 125, 115; 16, 25).[3] Pursuant to this charge a hearing was held under Section 10(k) of the Act.[4] The Board ruled that since petitioner

[2] The record establishes that the present controversy is merely another manifestation of the long-standing dispute between the Machinists Union and the Millwrights who are affiliated with the Carpenter's Union. See *United States* v. *Hutcheson*, 312 U. S. 219. Respondent, which had bargaining relationships with both unions, was of course subjected to rival pressures (R. 106-107; 31-32).

[3] An earlier charge had been filed by petitioner alleging a wrongful refusal to bargain by respondent. The General Counsel sustained the Regional Director's refusal to issue a complaint on this charge on the ground that there was no showing that respondent had failed to bargain (R. 125; 25, 70).

[4] Section 10(k) provides:

> Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(D) of section 8(b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon

was not presently demanding the assignment of any particular work either from respondent or from its subcontractors, but was merely seeking to limit the company's selection of contractors, the controversy did not constitute the kind of "dispute" covered by Sections 8(b)(4)(D) and 10(k) of the Act. Accordingly, since it had before it only the question of an alleged "dispute" within Sections 8(b)(4)(D) and 10(k), the Board quashed the proceeding. (R. 115, 125; 101 NLRB 346, 352.)

Meanwhile, on April 19, 1952, respondent instituted the instant proceedings for injunctive relief in the Circuit Court of the City of St. Louis, Missouri (R. 2). In these proceedings respondent alleged not only that petitioners had violated Section 8(b)(4)(D) of the National Labor Relations Act, as amended, as it had alleged before the Board, but also that the identical conduct constituted a violation of Section 8(b)(4)(A) and (B) of that Act.[3] The court issued a temporary restraining order forthwith. Thereafter, on April 30, 1952,

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methods for the voluntary adjustment of the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.

Under the statutory procedure, devised especially by Congress to deal with matters arising out of charges of Section 8(b)(4)(D) violations, the Board had no authority to, nor did it, pass on the question whether other subsections of Section 8 might have been violated.

[3] No charge having been filed with the Board in this latter regard, the Board had no occasion to pass on this issue. (See preceding note.) The text of Section 8(b)(4)(A) and (B) of the Act is set forth in the Appendix, *infra*, pp. 41-42.

respondent amended its pleadings in the state court to include for the first time an allegation that petitioners' conduct also constituted a conspiracy in restraint of trade in violation of Missouri law (R.S. Mo. 1949, Sec. 416.010). After hearing, the court, on October 3, 1952, granted a permanent injunction enjoining petitioners from any and all picketing of respondent's premises (R. 2, par. 15a, 272-283). Petitioners appealed to the Supreme Court of Missouri, which on February 8, 1954, affirmed the finding and decree of the trial court (R. 103, 265 S. W. 2d 325, 334).

The Missouri Supreme Court found that the purpose of the picketing was to compel "persons employed by or seeking to work for * * * construction contractors in moving, erecting, or installing machinery in St. Louis area breweries * * * to forego representation by their present bargaining agent, the Millwrights' Union, with whom the said construction contractors now have valid collective bargaining agreements, and become affiliated with the Machinists' Union in order to retain their employment * * *" (R. 108-109). The court further concluded (R. 111-112) that petitioners' conduct, directed against the contractors and their Millwright employees, was a conspiracy in violation of state statutory and common law; that the sole purpose of the picketing was to compel respondent to join in the unlawful conspiracy; and that the picketing effectuated by a combination in restraint of trade unlawfully prevented respondent from transporting, processing, and manufacturing its products.

Relying on *Giboney* v. *Empire Storage & Ice Co.*, 336 U. S. 490, and distinguishing *Garner* v. *Teamsters Union*, 346 U. S. 485, the Missouri Supreme Court rejected the contention that the National Labor Relations Act had preempted the field (R. 114-119) and that therefore the state court was without jurisdiction in the premises. The court held *Garner* inapplicable because the instant case, unlike *Garner*, did not, in the court's view, involve a labor dispute or an unfair labor practice, but constituted rather "coercive tactics restraining freedom of trade, an internal affair over which this State has 'traditionally exercised control' " (R. 116-118).

SUMMARY OF ARGUMENT

A. Congress has paramount power under the commerce clause to exclude state regulation of labor relations matters affecting interstate commerce. Because of the complex and far-flung character of labor controversies, Congress concluded that "centralized administration of specially designed procedures was necessary to obtain uniform application of its substantive rules and to avoid these diversities and conflicts likely to result from a variety of local procedures and attitudes toward labor controversies." *Garner* v. *Teamsters Union*, 346 U. S. 485, 490. Accordingly, where Congress has taken in hand a particular type of controversy or relationship in the field of labor relations affecting interstate commerce, a state may not adjudicate the same controversy or regulate the same relationship. And this is true whether or not the National Labor Relations Board, the agency designated by

Congress to administer its "specially designed procedures," has granted any relief with respect to the particular controversy or relationship. By the same token, where Congress has deliberately chosen to leave controversies or relationships within the ambit of its powers wholly or partially free of restraint or regulation, a state is, *pro tanto*, precluded from acting in the area.

Congress, however, is not required to exert the full scope of its power, and it has not done so. Thus, states can act, *inter alia*, in areas where Congress has left labor relations matters entirely ungoverned, or in situations where it is clear that the state action is not, primarily, the regulation of labor relations matters which fall within the Congressional purview, but merely the protection of a legitimate state interest which does not impinge on the area which the federal Act occupies. See *United Construction Workers* v. *Laburnum Corp.*, 347 U. S. 656.

B. The text of the Act and its legislative history demonstrate that Congress took in hand the type of controversy here involved and determined both the nature of the activity it wished to interdict and the breadth of the remedy it wished to afford. The advocates in Congress of the administrative approach narrowly defined the kind of jurisdictional dispute and secondary boycott which they deemed to constitute unfair labor practices and provided for injunctive relief in the federal courts, but only at the instance of the National

Labor Relations Board. Their opponents, however, advanced numerous proposals both in the House and the Senate which would have outlawed all jurisdictional disputes and secondary boycotts, whatever their genesis or scope, and, in addition, would have stripped such activities of the immunity to anti-trust prosecution afforded by the Norris-LaGuardia and Clayton Acts. Moreover, these proposals would also have permitted private parties to institute injunctive proceedings in the courts. The administrative approach prevailed in the law as finally enacted. The Board alone was permitted to institute injunctive proceedings, and the sole concession made in this regard was that private parties were allowed to bring damage actions in the courts for the violations defined in the Act.

In view of the comprehensive consideration thus given jurisdictional disputes and the kind of remedy which should be afforded, it is clear under related decisions of this Court that Congress has occupied the field, and that the states may not act in this area, whether their action would be consistent or inconsistent with the paramount federal pattern. By the same token, it is immaterial whether the Board, in a given situation, would or would not find an unfair labor practice to have occurred within the meaning of the relevant statutory provisions contained in the federal Act. The decisive factor is that the conduct under consideration falls within "the area of labor combat" which the Act regulates to the exclusion of the states *(Garner, supra)*.

C. The court below, relying on *Giboney* v. *Empire Storage & Ice Company*, 336 U. S. 490, holds that since the purpose and effect of its action is not to regulate labor relations, but merely to regulate trade practices, its power in this field is paramount. *Giboney* confirms the constitutional authority of a state to regulate trade within its borders and establishes the right of a state to apply such regulation even to conventional union activity. But that decision, concerned apparently with a purely local enterprise, does not pass on the question of federal supersedure over labor relations matters where interstate commerce is affected.

The fact that the state's action is characterized as dealing with a "restraint of trade" cannot in and of itself validate its effort to regulate union activities which are governed exclusively by federal legislation. Every strike, however legitimate its means and objective, gives rise to some restraint of trade, and on this theory states could, by merely affixing an anti-trust label to their action, effectively exercise concurrent jurisdiction over all such controversies no matter how clearly such matters fell within the federal jurisdiction. By a parity of reasoning, states could regulate labor relations in public utilities since the interest of a state in maintaining essential services is at least as great as its interest in regulating trade practices.

Bus Employees v. *Wisconsin Board*, 340 U. S. 383, however, is to the contrary, and demonstrates that even in such a situation the federal commerce

power prevails so long as Congress has chosen to exercise that power and to leave no room for state action.

ARGUMENT

The National Labor Relations Act, as Amended, Precludes a State from Enjoining Peaceful Picketing in the Type of Jurisdictional Dispute Here Involved.

It is undisputed that respondent is engaged in interstate commerce. Here, as in *Garner* v. *Teamsters Union*, 346 U. S. 485, 501, respondent, on the basis of the allegations in the complaint in the state court "could have presented [its] grievance to the National Labor Relations Board," and petitioner was "subject to being summoned before that body to justify [its] conduct." However here, as was not the case in *Garner*, respondent in addition to filing its state suit, did in fact present its grievance to the Board, albeit on sharply limited grounds,[6] and the Board after consideration of the merits dismissed the proceeding on the ground that petitioner's inconsistency did not violate Section 8(b)(4)(D) of the Act, the only infraction charged. Accordingly,

[6] As already noted, fns. 4 and 5, pp. 4-5, *supra*, respondent did not allege before the Board, as it did before the state court, that petitioner's conduct violated Section 8(b)(4)(A) and (B) of the Act, and the Board did not pass on that issue. To the extent that petitioner's conduct may be taken to fall within the confines of the cited provisions, this case is indistinguishable from *Garner* in that respondent was prosecuting a grievance before a state court when it "could have presented [but did not present] this grievance to the National Labor Relations Board." Moreover, when the state trial court issued its temporary restraining order and permanent injunction, the Board had not yet acted (*supra*, pp. 5-6); thus, at that stage the instant proceedings were in a posture similar to that in *Garner*.

the conflict between state and federal authority which was only potential in *Garner* has become an actuality here. Here too, unlike *Garner,* respondent's complaint in the state court contained, in addition to the allegation that petitioner's activities constituted an unfair labor practice within the prohibition of the federal Act, the further allegation, sustained by the court below, that these activities also were violative of Missouri's restraint of trade law. The issue here therefore is whether, in view of these differences between *Garner* and the instant case, the court below correctly concluded that the *Garner* holding permitted the state court to assert concurrent jurisdiction over the instant controversy. We believe, on the basis of Garner and other controlling decisions of this Court, that the decision of the Missouri court is incompatible with the federal Act.[7]

A. Congress, exercising its paramount federal power over labor relations matters affecting interstate commerce, has outlined in broad terms the respective areas of federal and state jurisdiction in this field

As this Court has repeatedly held, the National Labor Relations Act, both before and after the 1947 amendments, is "federal legislation, ad-

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[7] For an informative discussion of the instant case and the general problem of federal-state relations in this area, see Archibald Cox, *Federalism in the Law of Labor Relations*, 67 Harv. L. Rev. 1297, 1329-1332.

ministered by a national agency, intended to solve a national problem on a national scale." *National Labor Relations Board* v. *Hearst Publications*, 322 U. S. 111, 123. Congress from the outset made it clear that the Act "is paramount over other laws that might touch upon similar subject matters" (*Amalgamated Utility Workers* v. *Consolidated Edison Co.*, 309 U. S. 261, 267, quoting from Sen. Rep. No. 573, 74th Cong., 1st Sess., 15), and "that centralized administration of specially designed procedures was necessary to obtain uniform application of its substantive rules and to avoid these diversities and conflicts likely to result from a variety of local procedures and attitudes toward labor controversies." *Garner* v. *Teamsters Union*, 346 U. S. 485, 490.

The decisions of this Court show that Congress not only was aware, therefore, but intended that state action would be foreclosed where the federal statute applied. *Bus Employees* v. *Wisconsin Board*, 340 U. S. 383, 391; *Garner* v. *Teamsters Union*, 346 U. S. 485, 491, 500-501; *Rice* v. *Santa Fe Elevator Corp.*, 331 U. S. 218, 236; *California* v. *Zook*, 336 U. S. 725, 732. Where Congress has taken in hand a particular type of controversy or relationship, a state may not—whether by court action, legislative action, or administrative action—adjudicate the same controversy or regulate the same relationship. *Garner, supra; Capital Service, Inc.* v. *National Labor Relations Board*, 347 U. S. 501; *Hill* v. *Florida*, 325 U. S. 538; *Auto*

Workers v. *O'Brien*, 339 U. S. 454; *Bethlehem Steel Co.* v. *New York Board*, 330 U. S. 767; *Plankinton Packing Co.* v. *Wisconsin Board*, 338 U. S. 953. And it is immaterial in this regard that the Board has not actually granted any relief with respect to the particular controversy or relationship so long as it has the exclusive authority to act. *Garner, supra; LaCrosse Telephone Corp.* v. *Wisconsin Board*, 336 U. S. 18. Finally, where Congress, in formulating the Act, has considered the regulation of controversies or relationships within the ambit of the federal power and has determined to leave a particular subject matter wholly or partially free of regulation or restraint, a state is, *pro tanto*, precluded from acting in the area. "For a state to impinge on the area of labor combat designed to be free is quite as much an obstruction of federal policy as if the state were to declare [the activity in question] free for purposes or by methods which the federal Act prohibits." *Garner*, 346 U. S. at 500; *Bus Employees* v. *Wisconsin Board*, 340 U. S. 383 (strikes in public utilities); *Auto Workers* v. *O'Brien*, 339 U. S. 454 (strike vote authorization).

On the other hand, as this Court has pointed out, the text and history of the federal Act plainly contemplate certain areas subject to federal control in which the states are nonetheless free to act. Clearly within this category is the regulation of controversies or relationships which Congress has neither considered nor sought to regulate, but has left ungoverned. Thus, this Court held in *Auto Workers*

v. *Wisconsin Board*, 336 U. S. 245, 264-265, that Wisconsin could regulate the conduct there involved because

> recurrent or intermittent unannounced stoppage of work to win unstated ends was neither forbidden by federal statute nor was it legalized and approved thereby. Such being the case, the state police power was not superseded by congressional Act over a subject normally within its exclusive power and reachable by federal regulation only because of its effects on that interstate commerce which Congress may regulate.[8]

Moreover, even in those areas where Congress has asserted its paramount authority, Congress has made it clear that in certain instances the states may act—for example, with respect to breaches of the peace (*Allen-Bradley Local* v. *Wisconsin Board*, 315 U. S. 740), or with respect to violations

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[8] This Court found additional support for its holding in the proposition that the federal Act empowered the Board to forbid a strike because its "purpose" was illegal, but not because its "method" was illegal (at pp. 253, 263). However, it may be noted that Section 8(b)(1) of the Act does empower the Board to forbid strike activity by labor organizations which restrains or coerces employees in the exercise of the rights guaranteed by Section 7 of the Act. See, for example, *International Rice Milling Co., Inc.* v. *National Labor Relations Board*, 341 U.S. 665, 672, n. 5; *United Construction Workers* v. *Laburnum Corp.*, 347 U.S. 656, 668-669, *National Labor Relations Board* v. *United Mine Workers*, 202 F. 2d 177 (C.A. 3), and cases cited; *National Maritime Union of America*, 78 NLRB 971, 982-986.

of state restrictions on union-security arrangements more rigid than those contained in the federal Act (*Algoma Plywood & Veneer Co.* v. *Wisconsin Board*, 336 U. S. 301), or where similarity of statute and interpretation would enable the National Board to cede jurisdiction to a state agency (Section 10(a) of the Act).

The most recent pronouncement of this Court in the field of federal-state jurisdiction over labor controversies is *United Construction Workers* v. *Laburnum Corp.*, 347 U. S. 656. The nub of this decision is that the state may act where the essence of its action is not the regulation of labor relations matters which fall within the Congressional purview, but merely the protection of a legitimate state interest. *Laburnum*, however, in no way alters the principle established in *Garner* six months earlier, that a state may not "impinge on the area of labor combat" which the federal authority "designed to be free" (346 U. S., at 500). *Laburnum* held merely that the federal Act does not bar a state court from awarding damages in tort for violent activities of a labor organization which, although they constituted unfair labor practices under the federal Act, are also a common law tort. Support for this conclusion was found in the familiar principle that the Congressional intent in this regard was controlling. The Court stressed the legislative history of Section 8(b)(1)(A) of the Act to the effect that federal regulation of violence in labor disputes should not preclude concurrent exercise of local

police power over such violence merely because it occurred in a context of labor relations affecting interstate commerce (at pp. 668-669). Cf. *Allen-Bradley Local* v. *Wisconsin Board, supra.*

Moreover, the Court in *Laburnum* drew a distinction between a state court suit "enjoining future unfair labor practices" (p. 663) and one "dealing [by way of damages] with the consequences of tortious conduct already committed" (at p. 665). Pointing out that the Act's procedures are basically "preventive", providing "no general compensatory procedure except in * * * minor supplementary ways * * * " (*ibid.*), the Court concluded that a state remedy for damages would not necessarily result in the conflict of remedies *Garner* sought to avoid. On the other hand, the Court reiterated that where, as in *Garner* (and here), the state court is asked to enjoin practices which may be violations of the federal Act, it is without power to take such action because there is then a real likelihood of "colliding with the Board" (p. 663).[9]

Applying the foregoing principles to the instant case, we come to the conclusion that Congress has taken in hand this particular type of controversy so as to preclude state action. And this federal preemption, we submit, can be neither al-

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[9] For two recent cases reflecting somewhat divergent interpretations of *Laburnum*, see *Mahoney* v. *Sailors' Union*, 35 LRRM 2111 (Wash. Sup. Ct., Oct. 25, 1954), and *Benjamin* v. *Foidl*, 35 LRRM 2107 (Pa. Sup. Ct., Nov. 15, 1954).

tered nor avoided by characterizing the forbidden state regulation of the same controversy or relationship as being concerned with a "restraint of trade" rather than labor relations.

B. Congress "has taken in hand" jurisdictional disputes, thus occupying this area and excluding both concurrent and conflicting state regulation

In *Auto Workers* v. *O'Brien*, 339 U. S. 454, 456-457, this Court, holding that a strike vote provision of a Michigan statute was an unconstitutional invasion of a federally preempted area, declared:

> Congress has not been silent on the subject of strikes in interstate commerce. In the National Labor Relations Act * * * as amended by the Labor Management Relations Act, 1947 * * * Congress safeguarded the exercise by employees of "concerted activities" and expressly recognized the right to strike. It qualified and regulated that right in the 1947 Act. * * * None of these sections can be read as permitting concurrent state regulation of peaceful strikes for higher wages. Congress occupied this field and closed it to state regulation.

It is equally clear that Congress has not been silent on the subject of so-called jurisdictional and monopolistic strikes in interstate commerce; and, under the decisions of the Court, Congress also

"occupied this field and closed it to state regulation." Cf. *Bus Employees* v. *Wisconsin Board*, 340 U. S. 383, 387.

In its deliberations prior to the enactment in 1947 of the amended Act, Congress was deeply concerned with the obstructions to commerce created by "jurisdictional" and "monopolistic" strikes, and considered various proposals designed to remedy the situation. Indeed, there was much discussion of the precise dispute which underlies the instant case as a typical example of the activity Congress desired to regulate.[10] Accordingly, Section 12 of H. R. 3020, as it passed the House, designated as unlawful concerted activity "any sympathy strike, jurisdictional strike, monopolistic strike, or illegal boycott * * *." Rounding out the picture, Section 2(14) of the bill defined the term "illegal boycott" to include a concerted refusal by employees, or a threat thereof, "to render services where an object

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[10] The basic dispute which underlies the instant controversy gave rise to *United States* v. *Hutcheson*, 312 U.S. 219, a landmark case in this field. That case was repeatedly mentioned in the course of the Senate and House debates. 93 Cong. Rec. 3227-3228, 3652, 4197, 4837-4838. Like the instant case, *Hutcheson* involved a controversy between the Machinists and the Carpenters over the assignment of certain jobs by Anheuser-Busch, Inc., respondent herein. There, Anheuser-Busch had contracted with a third party for the erection of an additional facility, and the Carpenters demanded that certain jobs connected with this project be assigned to adherents of the Carpenters rather than to adherents of the Machinists. Rejection by Anheuser-Busch of these demands resulted in a strike and picketing by the Carpenters and an appeal to union members and their friends to refrain from buying Anheuser-Busch beer.

of the refusal or threat is to force a person to do business or to cease doing business with another person"; Section 2(15) of the bill defined the term "jurisdictional strike" to include a strike against an employer, "an object of which is to require that particular work be assigned to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class." Finally, Section 301 of the bill rendered such illegal boycotts and jurisdictional strikes subject to the Sherman Act.

The legislative history of the House proposals confirms the conclusion which was plain enough from the text of the House bill—that concerted activity of the kind here in issue was to be outlawed.[11] See House Report No. 245, 80th Cong., 1st Sess., pp. 22-24. This Report said (at p. 24):

> Illegal boycotts [outlawed under Section 12] take many forms. Often they are to compel employers to force their employees into unions or to give a union control over them as their bargaining agent in violation of the Labor Act itself. *Sometimes they are direct restraints of trade, designed to compel people against whom*

[11] Petitioners' conduct would also have been deprived of protection under the House bill (Sections 7, 8(b)(3), 2(11)) inasmuch as it constituted an effort to obtain agreement to a provision which was not a permissible subject of collective bargaining. Section 2(11) defined the proper subjects of collective bargaining, and concerted activities to obtain any benefits outside that area were declared to be unfair labor practices. These provisions were rejected in the law as enacted.

they are engaged in to place their business with some other than those they are dealing with at the time, or vice versa. * * *

Jurisdictional strikes usually involve quarrels, not between employers and employees, but between rival unions, which use the strike weapon against each other, and they partake of the nature of some forms of illegal boycotts. * * * [Emphasis added.]

See also pp. 31, 44, 45, and the comments of the Minority, pp. 71, 95-96. In addition to empowering the Federal Government to institute proceedings directed toward the elimination of illegal boycotts and jurisdictional disputes, the House bill would also have made such activity subject to injunctive proceedings at the instance of private parties injured thereby. H. R. 3020, Sec. 12(*c*); H. Rep. No. 245, 80th Cong., 1st Sess., p. 44.

The bill reported to the Senate by its Labor Committee contained provisions with respect to jurisdictional and boycott strikes analogous to those in the House bill. Section 8(b)(4)(1), (2) and (4) of S. 1126. However, Senator Ball, dissatisfied with the provisions of the Senate bill, which merely denominated such activities as unfair labor practices and provided for injunctive relief only at the request of the Board, proposed an amendment which not only would have subjected jurisdictional and boycott strike activity to the federal anti-trust laws but would also have authorized private parties to petition for injunctive relief. Sen. Rep. No. 105,

80th Cong., 1st Sess., Supplemental Views, pp. 54-56; 93 Cong. Rec. 4757, 4837-4847. The Ball amendment was long and thoroughly debated (93 Cong. Rec. 1824-1827, 1846, 3798, 3838, 4132-4133, 4439, 4757, 4837-4847, 4905). Acceptance or rejection of the proposed amendment turned essentially on a choice "between a procedure which would throw the issue into our common law courts, and a procedure which would throw the issue into the field of administrative law" (93 Cong. Rec. 4132).[12] The advocates of the Ball amendment stressed the desirability of allowing parties injured by boycotts and jurisdictional disputes to initiate their own suits, to control their own litigation, and to select their own courts rather than to petition a federal administrative agency with complete control over this process (93 Cong. Rec. 4837). The opponents, on the other hand, agreeing that this would be the impact of the amendment, emphasized that this could lead only to a resurgence of the very evils which the Norris-LaGuardia Act, as interpreted by this

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[12] In the course of the Senate debates on this issue, Senator Morse concluded a portion of his comments on this issue with the statement: "Does the Senator [Ellender] agree with me that we must make clear to the Senate that the choice which must be made is whether we are going to try to do this [*i.e.*, eliminate jurisdictional disputes and "illegal boycotts"] by way of an administrative law approach, or by way of a so-called court approach?" Senator Ellender, who was a member of the Senate Committee which had considered the proposed amendments to the Act, replied: "That seems to present the whole issue, I will say to the Senator" (93 Cong. Rec. 4132).

Court in the *Hutcheson* and related cases, was designed to eliminate (93 Cong. Rec. 4439).[13]

The upshot of this long debate was that the Ball amendment was rejected (93 Cong. Rec. 4847). Thereupon, the late Senator Taft, originally in favor of the Ball amendment but later persuaded that the "temper of the Senate" was opposed "to restoring the injunctive process even in cases of secondary boycotts and jurisdictional strikes" (93 Cong. Rec. 4843-4844), offered an amendment which provided merely for damage actions by injured parties in the federal district courts (93 Cong. Rec. 4858). Assured by Senator Taft that his amendment in no way invoked application of conspiracy or anti-trust statutes, the Senate adopted his amendment, which was later incorporated in the amended Act as Section 303 (93 Cong. Rec. 4858-4860, 4874-4875).

In the law as finally enacted, Section 8(b)(4)(D), the statutory provision invoked by respondent when it filed charges against petitioners before the Board (and invoked also by respondent before the Missouri courts), provides that it shall be an unfair labor practice for a labor organization or its agents to engage in, or to induce or encourage, a strike where an object thereof is "forcing or requiring any employer to assign particular work to employees in a particular labor organization or in

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[13] Senator Ball conceded that his amendment was designed to "correct" or "overrule" the interpretation of the Norris-LaGuardia and Clayton Acts made by this Court in the *Hutcheson* case and a number of other cases (93 Cong. Rec. 4838).

a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class * * *." The law further provides in Section 10(k) that whenever an unfair labor practice under Section 8(b)(4)(D) is charged, the Board is "empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen." (Following a hearing under this provision, the Board in the instant case determined only that no "dispute" existed within the meaning of Sections 8(b)(4)(D) and 10(k) of the Act.)

Under Section 8(b)(4)(A) and (B) of the Act, which respondent also invoked in its complaint in the state court, labor organizations are enjoined from (1) engaging in strike or picketing activity with an object of forcing any employer to cease doing business with any other person or (2) engaging in such activity against an employer with an object of forcing or requiring any other employer to recognize as the bargaining representative of his employees a union not certified by the Board as their bargaining representative. Section 10(l) of the Act directs and empowers the Board exclusively to petition for injunctive relief where, upon appropriate charges, the Board finds that there is reasonable cause to believe that a union is engaging in conduct proscribed by the various subsections of Section 8(b)(4). And, finally, as already stated, Section 303 grants to anyone injured by the unfair labor practices proscribed by Section 8(b)(4) the

right to sue for damages in the federal district courts.

Summarizing, then, Congress in the law as finally enacted rejected the sweeping provisions of the House bill and the Ball amendment. Instead of cataloguing, as did the House, a long and comprehensive list of "unlawful concerted activities" and subjecting those activities to the Sherman Act, Congress merely defined in Section 8(b)(4) a limited number of unlawful objectives and made it an unfair labor practice for a labor organization to strike, or to induce or encourage a strike, for these objectives. And instead of opening the courts generally to private petitions for injunctive relief in such situations, Congress designated the Board as the only agency entitled to obtain such relief. The only concession made to private parties in this regard was to afford them access to the federal district courts for the sole purpose of maintaining damage suits. This result reflects a deliberate and detailed determination of the extent to which activities of the kind involved in the instant case should be restricted and the extent to which they should be free of restriction. In the Conference Report which reconciled the conflicting versions of the House and Senate bills (H. Conf. Rep. No. 510, 80th Cong., 1st Sess., pp. 43-44), the several proposals were considered, changes were made to incorporate some of the proposals, and other proposals were rejected. The law, as finally enacted, thus represents the considered judgment of Congress as to the scope of the

regulation which the Federal Government chose to impose. And Congress, explicitly rejecting alternative proposals, chose to entrust the implementation of this regulatory scheme to exclusive administration by a single federal agency, the National Labor Relations Board.

In view of the comprehensive consideration accorded so-called jurisdictional and monopolistic strikes and the precise statutory formulation of both the substantive rights and procedural rules governing such disputes, it seems clear under the controlling decisions of this Court that Congress has occupied this field. By the same token, these decisions establish that Congress has precluded the states from applying more stringent or different sanctions than Congress itself applied or refrained from applying in fashioning the national labor policy. Here, as in *Garner*, "Congress did not merely lay down a substantive rule of law to be enforced by any tribunal competent to apply law generally to the parties. It went on to confide primary interpretation and application of its rules to a specific and specially constituted tribunal and prescribed a particular procedure * * *. Congress evidently considered that centralized administration of specially designed procedures was necessary to obtain uniform application of its substantive rules and to avoid these diversities and conflicts likely to result from a variety of local procedures and attitudes toward labor controversies." (346 U.S., at 490.)

As we read the controlling pronouncements of

this Court in related cases, insofar as Congress in the federal Act proscribed the type of union conduct here involved, whether under the provisions of Section 8(b)(4)(D), 8(b)(4)(A) or (B), or any other relevant provision of the Act,[14] the states are precluded from imposing different or even parallel restrictions. Correspondingly, if it should appear that the particular conduct is of a kind which Congress deliberately chose not to enjoin, then the states are not permitted by their action to frustrate the federal objective. As in *Garner* (pp. 499-500):

> The detailed prescription of a procedure for restraint of specified types of picketing would seem to imply that other picketing is to be free of other methods and sources of restraint. For the policy of the national Labor Management Relations Act is not to condemn all picketing but only that ascertained by its prescribed processes to fall within its prohibitions. Otherwise, it is implicit in the Act that the public interest is served by freedom of labor to use

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[14] The Missouri court found (*supra*, p. 6) that the basic purpose of petitioner's picketing was to compel the employees of various contractors "to forego representation by their present bargaining agent, the Millwrights' Union, with whom the said construction contractors now have valid collective bargaining agreements, and become affiliated with the Machinists' Union in order to retain their employment with such contractors or lose their opportunity for periodic employment at that work; * * *." Such a finding, if made by the Board in appropriate proceedings before it, might constitute a violation of Section 8(b)(2) of the Act. That section makes it an unfair labor practice for a union to cause or attempt to cause an employer to discriminate against employees by reason of their union membership.

> the weapon of picketing. For a state to impinge on the area of labor combat designed to be free is quite as much an obstruction of federal policy as if the state were to declare picketing free for purposes or by methods which the federal Act prohibits.

In the instant case, the Board, exercising the "prescribed processes," concluded that petitioners' conduct, as manifested in the record before it, did not fall within the prohibition of Section 8(b)(4)(D). Whether the same processes would result in a finding of a violation of Section 8(b)(4)(A) or (B) or of Section 8(b)(2) does not appear, nor is it material. For, contrary to the view of the Missouri court, whether the Board would or would not find the picketing in issue to constitute an unfair labor practice is not the controlling factor. This Court long ago noted in *Bethlehem Steel Co.* v. *New York Board,* 330 U.S. 767, 775, that "the power to decide a matter can hardly be made dependent on the way it is decided." Here, as in *Garner,* "It is not necessary or appropriate for us to surmise how the National Labor Relations Board might have decided this controversy" (p. 489), and the obvious alternatives envisaged by the Court that the Board might either "find a violation * * * [and] issue a cease-and-desist order" or "dismiss the complaint, thereby sanctioning the picketing" (p. 499) in no way deterred this Court from invalidating state action with respect to the controversy there

involved.[15] As in *Garner,* the significant factor here is that the picketing falls within the "area of labor combat" which the Act regulates. Under the statutory scheme, therefore, as the decisions of this Court make clear, the Board is the sole agency entitled to determine whether the picketing is within the prohibition of the Act or whether the "public interest is served by freedom of [petitioners] to use the weapon of picketing" (346 U.S., at 500). And when Missouri by its action in the instant case impinged on this area, it necessarily obstructed federal policy, and its action cannot stand.

It remains only to note on this phase of the case that this is not a situation where the Board, vested

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[15] The Missouri court also found that no labor dispute existed in the instant case and that the Board had so found. The court misread the Board decision. All that the Board could and did find in this regard was that "no 'dispute' [occurred] within the meaning of Sections 8(b)(4)(D) and 10(k)" in that the facts in the record before it did not reveal "a *present* demand for the assignment of work such as is contemplated by Section 8(b)(4)(D)" (101 NLRB 346, 350-352). This, of course, cannot be equated with a finding that no "labor dispute" existed. The amended Act, like its predecessor, defines a labor dispute as including "any controversy concerning terms, tenure or conditions of employment, * * * negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee" (Sec. 2(9) of the Act). Under this broad definition, the argument that no labor dispute existed here is plainly erroneous. Indeed, when a similar contention was urged before this Court in *Allen-Bradley Co.* v. *Electrical Workers,* 325 U.S. 797, this Court summarily rejected the contention as "untenable" (p. 807, n. 12). See also, *Yoerg Brewing Company* v. *Brennan,* 59 F. Supp. 625 (D. Minn.), collecting prior cases on this issue.

with jurisdiction under the Act, declines for budgetary or other administrative considerations to assert its jurisdiction and consider the controversy.[16] See *Garner*, 346 U.S. at 488. On the contrary, here the Board did assert jurisdiction, considered the merits of the controversy, and concluded that the picketing did not constitute a violation of Section 8(b)(4)(D). Assuming no other provision of the Act were applicable, the Board here declared the Congressional intent as surely as it would have done so had it determined that the conduct fell under the statutory ban. Missouri could no more rightfully enjoin conduct which the federal authority designed to be free than it could permit conduct which the federal authority enjoined. See *Garner*, at p. 501.

C. The state's restraint-of-trade laws cannot justify state regulation of the area preempted by the federal Act

If our analysis preceding this point is correct, the decision below must be reversed on the ground that Missouri's injunction invades an area preempted by Congress. It makes no difference how the state court characterizes its action—whether it be called state control of "labor relations," as in

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[16] This case does not require a determination as to the power of a state to act under such circumstances. The Board has not formally decided or otherwise taken a position on this question in any case or litigation in which it has been involved. It has, however, as a matter of practice, repeatedly refrained from intervening in any way in situations where the states have taken action with respect to industries over which the Board as a matter of policy declines to take jurisdiction.

Garner, or of trade restraints, as here. The court below held, however, that the state injunction was proper because (1) the case involved no "labor dispute" or "unfair labor practice," and (2) Missouri here was regulating a restraint of trade, not labor relations. We submit that the court erred on both grounds.

1. The assumption of the court below that the absence of a labor dispute or of an unfair labor practice *per se* removes the bar to state action is wholly without warrant. It may be noted that, as we have indicated (*supra*, n. 15, p. 29), the court was undoubtedly mistaken in its view (R. 117) that "A jurisdictional quarrel between two rival unions is not a labor dispute within the Norris-LaGuardia Act, the Wagner Act, or the Taft-Hartley Act." The shortest answer to the position of the court below is simply that a "labor dispute" does in fact exist here. Petitioners' strike and picket line to enforce a contract demand are classic ingredients of a "labor dispute" in terms of controlling federal law. *Allen-Bradley Co.* v. *Electrical Workers, supra; Mead, Inc.* v. *Teamsters Union*, 35 LRRM 2148 (C.A. 1, November 18, 1954).

But whether or not the conduct in question be deemed a labor dispute is, after all, of no consequence. For there is no requirement in the federal Act making the existence of a labor dispute a prerequisite to the Act's application. The Board has two primary functions, to conduct representation

proceedings and to adjudicate unfair labor practice cases. The sole prerequisite for invoking the former procedure is the filing of a petition asserting that a question concerning the representation of employees exists (Section 9(c) of the Act); the sole prerequisite for invoking the latter procedure is the filing of a charge alleging that an unfair labor practice (listed in Section 8) has occurred (Section 10(b) of the Act). In neither case is the allegation or existence of a labor dispute required to invoke the Board's jurisdiction.

Likewise, the existence or non-existence of an unfair labor practice is not the criterion by which the state's power can be determined. As has already been demonstrated, what is critical is not whether particular conduct constitutes an unfair labor practice, but whether Congress has occupied the area in which that conduct falls. The Board, exercising its exclusive jurisdiction, may find an unfair labor practice or may find that the disputed conduct falls within the area Congress chose not to restrict. The decisive point in either event is that the Board, and not state courts, is the agency authorized to make the determination.

2. There remains the view of the Missouri court that since the purpose and effect of its action is not to regulate labor relations but merely to regulate trade practices, its power in this field is paramount.[17] We believe that Missouri incorrectly as-

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[17] Our reading of the court's opinion suggests that the controlling considerations impelling the court action were con-

says its authority in this field. The constitutional authority of the state to regulate trade within its borders is, of course, firmly established. *Watson* v. *Buck*, 313 U.S. 387, 403-404. And *Giboney* v. *Empire Storage & Ice Company*, 336 U.S. 490, affirms the authority of the state to apply its trade regulation laws to union activity. But the propriety of Missouri's action here turns not on the validity of its restraint of trade legislation, nor even on the validity or constitutionality of the application of that legislation to union activity. The test, rather, is whether the particular state action, otherwise valid, has been superseded by federal authority or whether, as the Missouri court held, the state authority is paramount.

The Missouri court places its reliance on the *Giboney* case. In that case, the questions raised concerned the constitutional power of Missouri to apply its trade restraint law to labor union activities, and to enjoin union members from peaceful picketing carried on as an essential and inseparable part of a course of conduct which was in violation of the state law (336 U.S. at 491-492). This Court held (1) that states have constitutional power to prohibit competing dealers and their aiders and abettors from combining to restrain freedom of trade; (2) that such restraint of trade laws can be consti-

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siderations of labor relations policy, and not those of trade regulation. See discussion *infra*, pp. 38-39. However, for purposes of the present discussion, we assume that the court was merely regulating trade practices.

tutionally applied to labor unions; and (3) that an injunction against picketing issued pursuant to such law did not on the facts presented constitute an unconstitutional abridgement of free speech (pp. 495-504). However, this Court did not in *Giboney* pass on the question of federal supersedure.[18] Hence, the suggestion of the Missouri court (R. 114-115) that the *Giboney* holding of "paramount" authority in the state encompassed the Labor Management Relations Act is without real foundation.[19] The *Giboney* opinion makes it clear that this Court's holding that "the state's power to govern in this field is paramount" was addressed specifically to "the basic issue * * * whether Missouri or a labor union has paramount constitutional power to regulate and govern the manner in which certain trade practices shall be carried on in Kansas City, Missouri" (336 U.S. at 504).

Thus, neither the *Giboney* case nor any other authority empowers a state, acting under local restraint of trade laws, to regulate conventional union activities in an area which the federal Act has undertaken to regulate. It has frequently been noted

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[18] So far as appears, the ice company involved in *Giboney* was a purely local enterprise not engaged in interstate commerce within the meaning of the federal Act; hence that Act would not be applicable. In any event, there is no indication that this issue was raised or argued, and, quite clearly, it was not adjudicated.

[19] The Missouri court predicated this suggestion wholly on the circumstance that the decision in *Giboney* was handed down nearly two years after the effective date of the Labor Management Relations Act (R. 115).

that every strike, whether its object is spreading union organization or achieving economic demands, results in some restraint of trade. Cox, *Federalism in the Law of Labor Relations*, 67 Harv. L. Rev. 1297, 1329. Cf. *Apex Hosiery Co.* v. *Leader*, 310 U.S. 469, 513. On this theory, states presumably could, merely by affixing an anti-trust label to their actions, exercise concurrent jurisdiction over any labor controversy affecting interstate commerce within any area over which the states have "traditionally exercised control" (R. 118). Application of such a principle would seem to require, for example, a reversal of the result reached in *Bus Employees* v. *Wisconsin Board*, 340 U.S. 383, in which this Court barred Wisconsin from curtailing the right to strike in public utilities. Certainly, the power of Wisconsin to protect the life, health, and welfare of its inhabitants by forbidding interruption to essential services is no less than the right of Missouri to protect the welfare of its citizens from what it regards as undesirable trade practices.[20]

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[20] It should be noted that the practice of including clauses in collective bargaining agreements governing the subcontracting of work by an employer are by no means uncommon, and that clauses precisely like the one giving rise to the controversy in the instant case have been included in such agreements. See *Collective Bargaining Negotiations and Contracts:* Basic Patterns in Collective Bargaining Contracts (The Bureau of National Affairs, Inc., Washington, D. C.) p. 15:253, leaf dated 11-20-53; Chamberlain, *The Union Challenge to Management Control* (Harper & Brothers, New York, 1948), pp. 82, 317. The obvious motivation of the unions seeking the inclusion of such provisions is to protect their union wages, working standards, and security in employment.

The *Bus Employees* case demonstrates, however, that although the state control might otherwise be perfectly legitimate, the paramount federal commerce power prevails wherever Congress has chosen to exercise that power and has intended to leave no scope for state action. The point is equally well illustrated by the *Garner* decision, which, in our view, controls here. And see *Direct Transit Lines v. Teamsters Union*, 29 L.R.R.M. 2492 (W.D. Mich., February 5, 1952). In *Garner*, Pennsylvania could, with as much justification as Missouri here, have applied common or statutory restraint of trade law to the controversy before it and on that ground enjoined the conduct there involved. There is no basis for supposing that the label proposed to be affixed to the state's regulation could have affected the conclusion of Pennsylvania's Supreme Court and this Court that Congress had precluded such regulation.

As we have already demonstrated (*supra*, pp. 18-26), Congress was aware of jurisdictional disputes and debated various methods of dealing with them. Congress was also aware that such disputes were sometimes "direct restraints of trade, designed to compel people against whom they are engaged in to place their business with some other than those they are dealing with it at the time" (H. Rep. No. 245, p. 24). To the extent Congress desired to do so, it enacted statutory provisions designed to remedy these evils (Section 8(b)(4), 10(k), 10(l), 303). But Congress could have done what the House bill and the Ball amendment (*supra*, p. 21) proposed—namely, not only outlaw

such restraints generally but make them subject to the Sherman Act either by government suit or by individual suit. H. R. 3020 as it passed the House, Sec. 301(b).[21] However, Congress deliberately chose to limit the relief granted to that set forth in the Act, and deliberately chose to eschew the more drastic remedies. In the face of this deliberate refusal to enact a federal curtailment of this drastic nature in labor-management relations affecting interstate commerce, it would scarcely be in keeping with the federal regulatory scheme to permit the states to do so.[22] Cf. *Castle* v. *Hayes*

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[21] The House bill provided as follows:

> Section 6 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, as amended, is amended by inserting before the period at the end thereof a colon and the following: "*Provided, however,* That it shall not be within the legitimate objects of labor organizations or the officers, representatives, or members thereof, to make any contract, or to engage in any combination or conspiracy, in restraint of commerce, if one of the purposes or a necessary effect of such contract, combination, or conspiracy is to join or combine with any person to fix prices, allocate customers, restrict production, distribution, or competition, or impose restrictions or conditions, upon the purchase, sale, or use of any product, material, machine, or equipment, or to engage in any concerted activity declared to be unlawful under section 12 of the National Labor Relations Act, as amended."

[22] Compare *Auto Workers* v. *Wisconsin Board*, 336 U. S., at 257-258: "The most effective legal weapon against the struggling labor union was the doctrine that concerted activities were conspiracies, and for that reason illegal. Section 7 of the National Labor Relations Act took this conspiracy weapon away from the employer in employment relations which affect interstate commerce. No longer can any state, as to relations within reach of the Act, treat otherwise lawful

Freight Lines, Inc., No. 44 this Term, decided December 6, 1954.

This is not to say, of course, that the federal Act precludes the states from regulating any type of union activity under state restraint-of-trade laws. See Cox, *Federalism in the Law of Labor Relations*, 67 Harv. L. Rev. 1297, 1329-32. Thus, where, for example, union and employer groups combine for the purpose of restraining free competition or setting prices above a competitive level (see *Allen-Bradley Co.* v. *Electrical Workers*, 325 U.S. 797) it can reasonably be argued that the state can act, since the conventional labor activity aspect of the conduct is purely secondary. In such a case the state would not directly intrude upon the field of labor management relations preempted by Congress. Cf. the *Laburnum* case, 347 U. S. 656. But this is not so where the restraint of trade is merely an incidental consequence of conventional union activities for conventional union objectives, as is the case here. See *supra*, p. 35, n. 20.

It should be observed, finally, that analysis of the Missouri Supreme Court's opinion in the instant case reveals that what that court was regulating is probably more accurately described as "labor relations" than as "restraint of trade." The source of the evil in the court's view was that (R. 108-109):

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activities to aid unionization as an illegal conspiracy merely because they are undertaken by many persons acting in concert."

> under the terms [of the contract] sought to be imposed by the Union, persons employed by or seeking to work for the above construction contractors in moving, erecting, or installing machinery in St. Louis area breweries would be compelled to forego representation by their present bargaining agent, the Millwrights' Union, with whom the said construction contractors now have valid collective bargaining agreements, and become affiliated with the Machinists' Union in order to retain their employment * * *.

It was this conduct which the court denominated a conspiracy in restraint of trade in violation of its common and statutory law (R. 109, 111). On the other hand, this, as the legislative history of the amended Act shows (*supra*, pp. 18-30), was precisely the type of conduct which Congress considered and chose to regulate only in the manner prescribed in the federal Act.[23] It would appear, therefore, that Congress has occupied the field in which this case falls so as to preclude state action.

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[23] We do not intend to suggest here that the state action falls because the language of its opinion manifests that it was regulating labor relations and not restraint of trade. It is not the language but the situation which is the criterion. The opinion in the instant case merely reflects the actual situation.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the judgment of the court below should be reversed.

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DECEMBER, 1954

APPENDIX

The relevant provisions of the Labor-Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C., 141, *et seq.*), are as follows:

DEFINITIONS

Sec. 2. When used in this Act—

* * * * *

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

* * * * *

UNFAIR LABOR PRACTICES

Sec. 8. * * *

* * * * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

* * * * *

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle

or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9; (C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9; (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work:

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REPRESENTATIVES AND ELECTIONS

SEC. 9. * * *

* * * * *

(c) (1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9 (a), or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in section 9 (a); or

(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 9 (a); the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a

question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

* * * * *

PREVENTION OF UNFAIR LABOR PRACTICES

Sec. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: * * *

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: * * *

* * * * *

(k) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (D) of

section 8 (b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.

"(l) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8 (b), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for

appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: *Provided further,* That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: *Provided further,* That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to

the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8 (b) (4) (D).

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Title III

Suits By And Against Labor Organizations

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Boycotts and Other Unlawful Combinations

Sec. 303. (a) It shall be unlawful, for the purposes of this section only, in an industry or activity affecting commerce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is—

(1) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;

(2) forcing or requiring any other employer to recognize or bargain with a labor

organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act;

(3) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act;

(4) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class unless such employer is failing to conform to an order or certification of the National Labor Relations Board determining the bargaining representative for employees performing such work. Nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under the National Labor Relations Act.

(b) Whoever shall be injured in his business or property by reason or any violation of subsection (a) may sue therefor in any district court of the United States subject to the limitations and provisions of section 301 hereof without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit.

* * * * *

The relevant provisions of Chapter 416 of the Revised Statutes of Missouri are as follows:

Chapter 416: Monopolies, Discriminations and Conspiracies.

Section 416.010. *Combination in restraint of trade declared a conspiracy:*

Any person who shall create, enter into, become a member of or participate in any pool, trust, agreement, combination, confederation or understanding with any person or persons in restraint of trade or competition in the importation, transportation, manufacture, purchase or sale of any product or commodity in this state, or any article or thing bought or sold whatsoever, shall be deemed and adjudged guilty of a conspiracy in restraint of trade, and shall be punished as provided in sections 416.010 to 416.100, 416.240, 416.260 to 416.290 and 416.400.

* * * * *

Section 416.050. *Penalties:*

Any person violating any of the provisions of sections 416.010 to 416.100, 416.240, 416.260 to 416.290 and 416.400 or who shall do any act prohibited or declared unlawful by the provisions of said sections, shall be adjudged guilty of a felony, * * *.

* * * * *

Section 416.070. *Offending corporations to forfeit charter and property:*

Any corporation * * * which shall violate any of the provisions of sections 416.010 to 416.100, * * * may * * * be declared by the court to have forfeited its corporate rights and franchises * * *; and such court may, by such judgment and decree, also declare all or any part of the property of such corporation forfeited unto the state, or * * * assess against it a fine. * * *

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Section 416.090. *Persons injured to recover triple damages:*

Any person injured in his business or property by any other person or persons by reason of anything forbidden or declared to be unlawful by sections 416.010 to 416.100 * * * shall recover threefold the damages by him sustained, and the costs of the suit, including a reasonable attorney's fee.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1934 928593 778